IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 26 OF 2004
WITH
CRIMINAL WRIT PETITION NO. 42 OF 2004

CRIMINAL WRIT PETITION NO. 26 OF 2004

Shameer Carvalho,
Central Jail Aguada,
Sinquerim, Goa. ... Petitioner

versus

State of Goa
through the Custody Administration. ... Respondent

Mr. J. A. Lobo, Advocate under the Legal Aid Scheme for the Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent.

CRIMINAL WRIT PETITION NO. 42 OF 2004

Sandeep Narvekar,
Central Jail Aguada,
Sinquerim, Goa. ... Petitioner

versus

1. State of Goa,
   through the Public Prosecutor.

2. Superintendent Central Jail,
   Aguada. ... Respondents.

Mr. D. Pangam, Advocate under the Legal Aid Scheme for the Petitioner.

Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent No.1.

Mr. A. N. S. Nadkarni, Advocate General with Mr. P. A. Kamat, Government Advocate for Respondent No. 2.

CORAM : P. V. HARDAS &
N. A. BRITTO, JJ.

DATE : 24TH AUGUST,2004.

ORAL JUDGMENT(PER P.V.HARDAS,J.)

Rule made returnable forthwith. With the consent of learned Counsel for the parties, these Petitions are taken up for final hearing at the stage of Admission.

2. Since both the Petitioners in these Petitions have common grievance, both these Petitions are being decided by this common Judgment.

3. The Petitioner in Criminal Writ Petition No.26 of 2004, by his letter sent through Jail, which was treated as a Criminal Writ Petition, has complained that as per the rules, he is allowed only one visit per month. The second grievance is that the fruits presented to him by the visitors are not allowed by the Jail Authorities. The Jail Authorities are lenient when it comes to foreigners when the foreigners are presented with fruits and when the fruits are given to the Petitioner by his relatives and friends he is not allowed to accept.

4. In Criminal Writ Petition No.42 of 2004, the grievance of the Petitioner is that initially, he was allowed two visits per month but the Jail Authorities have reduced the two visits per month to one visit.

5. Mr. D. Pangam, learned Counsel appointed under the Legal Aid Scheme on behalf of the Petitioner in Criminal Writ Petition No.42 of 2004 has also urged before us that the relevant rules in respect of classification of prisoners is arbitrary and there is no rational basis for classification of prisoners as Class I and Class II. The rules confer a discretion on the Authorities in classifying a convict as Class I prisoner.

6. On notice being issued to the Respondents, the Respondents have filed their Affidavits and as per the Affidavits, it is stated that the convicted prisoners are entitled to one visit per month as per the rules. It is also stated in the Affidavits that one visit per month is allowed as of right while the Superintendent of Prisons may permit more visits than one if the necessary grounds as are stated in the rules is made out.

7. It would be useful to refer to Rule 5 of the Goa, Daman & Diu Prisons(Facilities to Prisoners) Rules, 1968. Rule 5 reads as under:-

> 5. Scale of interviews.- A convicted criminal prisoner in Class I shall be entitled to have one interview every fortnight; and a convicted criminal prisoner in Class II shall be entitled to have one interview within a period of one month".

8. Rule 6 provides that the Superintendent may, notwithstanding the misconduct, if any, grant the prisoner interviews or allow him despatch of letters at shorter intervals than those provided for in these rules, regard being had to special or urgent grounds such as the serious illness of the prisoner, the occurence of death of his near relative, the arrival of his friends or relatives from a distance to see the prisoner and undue hardship that may be caused to them if interview is refused.

9. Rule 6 further provides that in the event, he is nearing release and wishes to secure employment or to make any other arrangement for his rehabilitation in society after release the Superintendent may grant him more visits than one visit to which, he is entitled to. Rule 6 also provides that additional visits can be granted for any other sufficient cause.

10. Reliance is placed by the learned Counsel for the Petitioners on a decision of the Supreme Court in **Rama Murthy** v. **State of Karnataka**((1997) 2 SCC 642). The Supreme Court in paragraph 44 has observed:-

> "It is, of course, correct that at times visit may become a difficult task for the visitors. This wowuld be so where prisoners are geographically isolated. This apart, in many jails

> facilities available to the visitors are degrading. At many places even privacy is not maintained. If the offenders and visitors are screened, the same emphasises their separation rather than retaining common bonds and interests. There is then urgent need to streamline these visits".

11. In para 45 of the Report, the Supreme Court has quoted with approval the observations of Dr. Mir Mehraj-ud-din in his book "Crime and Criminal Justice System in India" that frequent jail visits by family members go a long way in acceptance of the prisoner by his family and small friendly group after his release from jail finally, as the visits continue the personal relationship during the term of imprisonment, which brings about a psychological communion between him and other family members.

12. The learned Counsel for the Petitioners have further placed reliance in the case of **Sunil Batra** v. **Delhi Administration**(AIR 1980 SC 1579). Reliance is principally placed on the observations of the Supreme Court in paragraphs 53 and 54 which read thus:-

> "53. Section 29 and connected rules relating to solitary confinement have been covered by Batra's case(AIR 1978 SC 1675). But Prem Chand, in this very case, has been sent to a 'solitary or punishment' cell without heading the rule in

Batra's case regarding impost of punitive solitary confinement. We cannot agree that the cell is not 'Solitary' and wonder what sadistic delight is derived by the warders and wardens by such cruelty. Any harsh isolation from society by long, lonely, cellular detention is penal and so must be inflicted only consistently with fair procedure. The learned Solicitor General mentioned that some prisoners, for their own safety, may desire segregation. In such cases, written consent and immediate report to higher authority are the least, if abuse is to be tabooed".

54. Visits to prisoners by family and friends are a solace in isolation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Act.19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory! Shelkdon Krantz rightly remarks: Sheldon Krantz, Corrections and Prisoners Rights pp. 129-130.

In 1973, the National Advisory Commission argued that prisoners should have a "right" to visitation. Task Force Report, Corrections (1973) at 66. It also argued

> that correctional officials should not merely tolerate visiting but should encourage it, particularly by families. Although the Commission recognised that regulations were necessary to contend with space problems and with security concerns, it proposed that priority be given to making visiting areas pleasant and unobstrusive. It also urged that corrections officials should not eavesdrop on conversations or otherwise interfere with the participants privacy. Thus, although there may be current limitations on the possible use of the Constitution on visitations by family and friends, public policy should dictate substantial improvements in this area, in any event. We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected".

13. The Supreme Court ultimately in paragraph 54 has held that liberal visits where close friends and legitimate callers are part of the prisoners' kit of rights and shall be respected.

14. As rightly pointed out by Mr. A. N. S. Nadkarni, learned Advocate General on behalf of the Respondents, that the rules contemplate one visit per

month as of right and a discretion is conferred on the Superintendent of Prisons to allow prisoners more visits than one for reasons which are set out in Rule 6 of the Goa, Daman & Diu Prisons(Facilities to Prisoners) Rules, 1968. It is not the case of the Petitioners in these two Petitions that they had complied with Rule 6 and that they had made out a ground under Rule 6 for permitting additional visits and the Superintendent has arbitrarily rejected their request. More visits than one as of right cannot be permitted in view of Rule 5 which mandates that the prisoners shall be entitled to one visit per month. No mandamus can be issued to allow the Jail Authorities to permit the Petitioners more visits than one contrary to the rules. There is no challenge to the validity of the rules and in such circumstances, according to us, the first submission is wholly unmerited.

15. Turning to the other submission that the prisoners are not allowed to accept fruits given by their relatives and friends, it has been urged on behalf of the State that the prisoners are not allowed to accept fruits and other articles which are made available in the canteen. Thus, under the rules prisoners are prohibited from accepting fruits and other articles which are enumerated in the rules and available in the Jail canteen. The Respondents in the Affidavit have denied that any foreigners were allowed to accept fruits given

either by their friends or relatives. The Respondents have placed before us the case of one foreigner who was a case of HIV Positive and to whom the doctors, Medical Officers had recommended a diet of fruits, which were not normally available in the Jail canteen, and the Jail Authorities had permitted him to accept fruits from his friends/relatives. However, since the rules do not permit a convicted prisoner to accept fruits or other articles from either his relatives or friends a writ cannot be issued to the Jail Authorities permitting the prisoners like the Petitioners to receive fruits and other articles from their friends or relatives.

16. We direct the Superintendent of Prisons to personally look into the matter and verify whether the foreigners have been receiving fruits and other articles contrary to the rules and to put immediate stop to the practice of permitting the foreigners to receive fruits and other articles from either their friends or relatives. If necessary, the Superintendent of Prisons may take appropriate action against the erring Officers.

17. Mr. D. Pangam, learned Counsel on behalf of the Petitioner in Criminal Writ Petition No.42 of 2004 has urged before us that Rule 3 of the Goa, Daman & Diu Prisons(Facilities to Prisoners) Rules, 1968 speaks about classification of prisoners into two classes namely Class

I and Class II. Sub-Rule 2 of Rule 3 further provides that the Superintendent shall ordinarily place all convicted prisoners in Class II. The proviso to sub-rule 2 provides that either the State Government may suo motu or on the recommendation if any, made by the convicting court or any court superior thereto or on the recommendation of the Superintendent made under Rule 4 direct any convicted prisoner to be placed in Class I. According to the learned Counsel on behalf of the Petitioner, the rules confer unbridled discretion on the State Government in classification of the prisoners as Class I.

18. The learned Advocate General on behalf of the Respondents/State has invited our attention to the Classification Rules of 1969 which deal with the formation of the Classification Committee and the basis for classification.

19. The learned Counsel on behalf of the Petitioner in Criminal Writ Petition No.26 of 2004, has very fairly conceded before us that there is no challenge in this Petition in respect of the classification of prisoners in Class I or Class II. However, the learned Counsel for the Petitioner states that in the peculiar facts of the case the Court may examine a challenge to these rules and strike down the rules as arbitrary and discriminatory.

According to us, this exercise would be an academic exercise as the Affidavit of the Respondents disclose that at present, all the prisoners in the prison have been classified as Class II. It is not the case of the prisoners that a prisoner has been classified as Class I and is either challenging his classification or is challenging denial of being classified as Class I prisoner. The Rules of 1969 relating to classification provided the basis for classifying the prisoners as Class I prisoners. In the absence of any challenge to these classification and rules framed thereunder, according to us, the challenge in that regard is wholly unmerited and would be an exercise in futility and, therefore, we do not propose to advert to this challenge. We leave the question open to be adjudicated in an appropriate proceeding before this Court.

20. After giving our anxious consideration to the rival submissions made, we are of the considered opinion that these two Petitions are sans merit and are accordingly dismissed. Rule discharged. In the circumstances, there shall be no order as to costs.

P. V. HARDAS, J.

N. A. BRITTO, J.

RD.